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8 **United States District Court**
9 **Central District of California**
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11 JOSE RAMIREZ,

12 Plaintiff-Appellee,

13 v.

14 PACER CARTAGE, INC.,

15 Defendant-Appellant.
16

Case № 2:15-CV-03830-ODW (AGRx)

**ORDER DENYING REQUEST TO
REMAND**

17 On April 21, 2015, Defendant-Appellant Pacer Cartage, Inc. appealed from a
18 decision of the California Labor Commission to the Los Angeles Superior Court
19 pursuant to California Labor Code section 98.2. (ECF No. 1–1.) On May 20, 2015,
20 Pacer removed the case to federal court based on diversity jurisdiction. (ECF No. 1.)
21 Because Pacer both initiated the action in state court and removed the case to federal
22 court, the Court ordered Pacer and Plaintiff-Appellant Jose Ramirez to brief the issue
23 whether Pacer’s removal was proper. (ECF No. 11.) On September 30, 2015, both
24 parties submitted timely briefs. (ECF Nos. 12, 13.) Ramirez argued that Pacer
25 improperly removed the action because Pacer was the party that first requested
26 judicial intervention, and therefore was the “plaintiff” for purposes of removal. Pacer
27 argued that removal was proper because Ramirez initiated the Labor Commission
28 proceeding, and thus was the “plaintiff” for the purposes of removal. While the Court

1 agrees with Ramirez, the Court has since determined that it lacks the authority to
2 remand the action.

3 Under 28 U.S.C. § 1441(a), only a defendant may remove a case from a state
4 court to a federal court. This procedural requirement exists to ensure that both the
5 plaintiff and the defendant have the opportunity to select federal court where federal
6 jurisdiction exists. *See Oppenheimer & Co. v. Neidhardt*, 56 F.3d 352, 356 (2d Cir.
7 1995) (“[F]or the purposes of removal of arbitration questions, the plaintiff is the party
8 who first invokes the aid of a court.”); *Range Oil Supply Co. v. Chicago, R.I. & P.R.*
9 *Co.*, 248 F.2d 477, 479 (8th Cir. 1957) (finding that the party who appealed an
10 administrative decision was the aggressor in the civil case, and therefore the non-
11 appealing party was the defendant and could remove the case to federal court). In the
12 present case, Pacer was the party that first invoked the aid of a judicial forum by
13 appealing—to state court—an administrative decision awarding damages to Ramirez.
14 (ECF No. 1–3.) Thus, Pacer is the plaintiff for the purposes of the removal statute,
15 and therefore could not remove the case to federal court. Pacer’s opportunity to
16 choose federal court occurred when it filed the action; it does not get two chances to
17 select federal court.

18 Despite this obviously improper removal, the Court has determined that it lacks
19 the power to remand this case. The Court has no authority to *sua sponte* remand an
20 action for procedural defects in removal. *Kelton Arms Condo. Owners Ass’n, Inc. v.*
21 *Homestead Ins. Co.*, 346 F.3d 1190, 1191 (9th Cir. 2003). Moreover, a request to
22 remand the case must be made within thirty days of removal. 28 U.S.C. § 1447(c);
23 *see N. Cal. Dist. Council of Laborers v. Pittsburg–Des Moines Steel Co.*, 69 F.3d
24 1034 (9th Cir. 1995) (noting that “the critical date is not when a motion to remand is
25 filed, but when the moving party asserts a procedural defect as a basis for remand”
26 and holding that “§ 1447(c) prohibits a defect in removal procedure from being raised
27 later than 30 days after the filing of the notice of removal”). Here, Ramirez first
28 asserted a procedural defect in removal in its September 30 brief, which was filed fifty

1 days after removal. It is thus untimely.¹ As a result, the Court has no option but to
2 retain jurisdiction over the action.

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4 **IT IS SO ORDERED.**

5
6 **October 27, 2015**

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9 **OTIS D. WRIGHT, II**
10 **UNITED STATES DISTRICT JUDGE**

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¹ Even if the Court interpreted its request for briefing as a request for remand under § 1447(c),
28 that request was made thirty-eight days after removal. (ECF No. 11.)